

By: Carona  
(Clardy)

S.B. No. 778

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (f), Section 113.053, Property Code, is amended to read as follows:

(f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services~~[, provided, however, nothing in this section shall allow an affiliate or division to engage in the sale or business of insurance if not otherwise permitted to do so]; [and]~~

(2) unless the instrument governing the fiduciary

1 relationship expressly prohibits the purchase or charge, purchase  
 2 insurance underwritten or otherwise distributed by an affiliate, a  
 3 division within the financial institution, or a syndicate or  
 4 selling group that includes the financial institution or an  
 5 affiliate and charge the trust or custodial account for the  
 6 insurance premium, provided that the insurance product and premium  
 7 are the same or similar to a product and premium offered by  
 8 organizations that are not an affiliate, a division within the  
 9 financial institution, or a syndicate or selling group that  
 10 includes the financial institution or an affiliate; and

11           (3) receive a fee or compensation, directly or  
 12 indirectly, on account of the services performed or the insurance  
 13 product sold by the affiliate, ~~[or]~~ division within the financial  
 14 institution, or syndicate or selling group that includes the  
 15 financial institution or an affiliate, whether in the form of  
 16 shared commissions, fees, or otherwise, provided that any amount  
 17 charged by the affiliate, ~~[or]~~ division, or syndicate or selling  
 18 group that includes the financial institution or an affiliate for  
 19 the services or insurance product is disclosed and does not exceed  
 20 the customary or prevailing amount that is charged by the  
 21 affiliate, ~~[or]~~ division, or syndicate or selling group that  
 22 includes the financial institution or an affiliate, or a comparable  
 23 entity, for comparable services rendered or insurance provided to a  
 24 person other than the trust.

25           SECTION 2. Section 116.201, Property Code, is amended to  
 26 read as follows:

27           Sec. 116.201. DISBURSEMENTS FROM INCOME. A trustee shall

1 make the following disbursements from income to the extent that  
2 they are not disbursements to which Section 116.051(2)(B) or (C)  
3 applies:

4 (1) one-half of the regular compensation of the  
5 trustee and of any person providing investment advisory or  
6 custodial services to the trustee unless, consistent with the  
7 trustee's fiduciary duties, the trustee determines that a different  
8 portion, none, or all of the compensation should be allocated to  
9 income;

10 (2) one-half of all expenses for accountings, judicial  
11 proceedings, or other matters that involve both the income and  
12 remainder interests;

13 (3) all of the other ordinary expenses incurred in  
14 connection with the administration, management, or preservation of  
15 trust property and the distribution of income, including interest,  
16 ordinary repairs, regularly recurring taxes assessed against  
17 principal, and expenses of a proceeding or other matter that  
18 concerns primarily the income interest; and

19 (4) recurring premiums on insurance covering the loss  
20 of a principal asset or the loss of income from or use of the asset.

21 SECTION 3. Subsection (a), Section 116.202, Property Code,  
22 is amended to read as follows:

23 (a) A trustee shall make the following disbursements from  
24 principal:

25 (1) the remaining one-half of the disbursements  
26 described in Section [~~Sections~~] 116.201(1) unless, consistent with  
27 the trustee's fiduciary duties, the trustee determines that a

1 different portion, none, or all of those disbursements should be  
2 allocated to income, in which case that portion of the  
3 disbursements that are not allocated to income shall be allocated  
4 to principal;

5 (1-a) the remaining one-half of the disbursements  
6 described in Section 116.201(2) [~~and (2)~~];

7 (2) all of the trustee's compensation calculated on  
8 principal as a fee for acceptance, distribution, or termination,  
9 and disbursements made to prepare property for sale;

10 (3) payments on the principal of a trust debt;

11 (4) expenses of a proceeding that concerns primarily  
12 principal, including a proceeding to construe the trust or to  
13 protect the trust or its property;

14 (5) premiums paid on a policy of insurance not  
15 described in Section 116.201(4) of which the trust is the owner and  
16 beneficiary;

17 (6) estate, inheritance, and other transfer taxes,  
18 including penalties, apportioned to the trust; and

19 (7) disbursements related to environmental matters,  
20 including reclamation, assessing environmental conditions,  
21 remedying and removing environmental contamination, monitoring  
22 remedial activities and the release of substances, preventing  
23 future releases of substances, collecting amounts from persons  
24 liable or potentially liable for the costs of those activities,  
25 penalties imposed under environmental laws or regulations and other  
26 payments made to comply with those laws or regulations, statutory  
27 or common law claims by third parties, and defending claims based on

1 environmental matters.

2       SECTION 4. (a) Except as otherwise expressly provided by a  
3 trust, a will creating a trust, or this section, the changes in law  
4 made by this Act apply to a trust existing or created on or after  
5 September 1, 2013.

6       (b) For a trust existing on September 1, 2013, that was  
7 created before that date, the changes in law made by this Act apply  
8 only to an act or omission relating to the trust that occurs on or  
9 after September 1, 2013.

10       SECTION 5. This Act takes effect September 1, 2013.